

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

MATTHEW ABRAHAM MARTINEZ,	§	
	§	
VS.	§	CIVIL ACTION NO.4:11-CV-861-Y
	§	
RICK THALER,	§	
Director, T.D.C.J.	§	
Correctional Institutions Div.	§	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 of petitioner Matthew Abraham Martinez, along with the May 4, 2012 findings, conclusions, and recommendation of the United States magistrate judge. The magistrate judge gave the parties until May 25, 2012, to file written objections to the findings, conclusions, and recommendation. As of the date of this order, no written objections have been filed.

The Court has reviewed the pleadings and the record in this case, and has reviewed for clear error the findings, conclusions and recommendation. The Court concludes that, for the reasons stated by the magistrate judge, the respondent's motion to dismiss should be granted and the petition for writ of habeas corpus should be dismissed with prejudice as barred by limitations.

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

The respondent's March 15, 2012 motion to dismiss (doc. 14) is GRANTED.

Petitioner Matthew Abraham Martinez's petition for writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED WITH PREJUDICE.

*Certificate of Appealability*

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.<sup>1</sup> Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."<sup>2</sup> The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."<sup>3</sup> A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."<sup>4</sup>

Upon review and consideration of the record in the above-referenced case as to whether petitioner Martinez has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the May 4, 2012, Findings, Conclusions, and Recommendation of the United States Magistrate Judge.<sup>5</sup>

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<sup>1</sup>See Fed. R. App. P. 22(b).

<sup>2</sup>RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

<sup>3</sup>28 U.S.C.A. § 2253(c)(2)(West 2006).

<sup>4</sup>*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003), citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

<sup>5</sup>See Fed. R. App. P. 22(b); see also 28 U.S.C.A. § 2253(c)(2)(West 2006).

Therefore, a certificate of appealability should not issue.

SIGNED June 6, 2012.

  
TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE